IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.248 OF 2004

Mazgaon Dock Ltd. ... Petitioners.

vs

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Essar Oil Ltd. ...Respondents

Mr.Sudeep Sen i/b. Udwadia Udeshi, for Petitioners.

Mr.Anil Menon, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 28th June,2005

P.C.:-

1. By this petition, the petitioners challenge the Award made by the sole Arbitrator dated 5.1.2004. By that Award, the learned Arbitrator has directed the petitioners to pay certain amount to the respondents. In all five contentions are raised before me. The first contention is that the claim made by the respondents for the period from December,1999 to February,2000 could not have been taken into consideration and could not have been awarded

because the new contract came into existence in February,2000. The second contention is that the contract was for 142 days and within that period of 142 days if the barge remains idle then the claim for stand-by charges could not have been claimed and could not have been awarded by the learned Arbitrator. The third contention is that the learned Arbitrator has committed an error in making the Award in favour of the Respondents for the amount claimed against work done for the period after 28th April,2000. The fourth contention is that apart from the Petitioners, the Respondents and M/s.Das Offshore were parties to the contract and as the petitioners were making payment to M/s.Das Offshore, the reference should not have been entertained which was made by the respondents-Essar oil. The last contention is that the material was carried away by the respondents from Nhava Sheva to the first site as per the terms of the contract and therefore, no extra payment could have been awarded for that.

2. So far as the first and last contentions are concerned, I have not been pointed out by the learned counsel for the petitioners that these contentions were raised in the statement of defence that was filed before the learned Arbitrator, and therefore, these contentions cannot be entertained.

3. So far as the second contention is concerned, perusal of clause 4.4 of the contract shows that a party can claim stand-by charges if a barge remains idle even during the contract period which was of 142 days, and therefore, in my opinion, the sole Arbitrator has dealt with the contention that

within a period of 142 days there can be a claim for stand by charges, correctly.

4. So far as the claim regarding awarding of amount for the work carried out after 28th April,2000 is concerned, the entire award in this regard turns on interpretation of the terms of contract. The learned Arbitrator has dealt with this aspect of the matter in detail and has held that the work had to be completed by 28th April,2000, however, the work could not be completed because the petitioners committed default in its obligation of providing barge for 79 days. Instead the second barge was provided for 61 days only. The conclusion reached in this regard by the learned Arbitrator is a possible conclusion to be reached on the basis of the material on record. Therefore, I do not see any reason to disturb the same.

5. So far as the contention that because the payment was made to M/s.Das offshore by the petitioners, all the three parties should have been before the Arbitrator is concerned, when according to the petitioners, the petitioners have made payment to the M/s.Das Offshore and in relation to the same work, the respondents were making claim., it was for the petitioner to make reference against M/s. Das offshore and that matter ought to have referred to the same Arbitrator. I do not find any substance in any of the contentions raised on behalf of the petitioners. Thus, I find that there is no reason to interfere with the Award at the instance of the petitioners as none of the contentions raised on behalf of the petitioners have any substance.

Therefore, the petition fails and is dismissed. The petitioners are directed to pay cost of this petition to the respondents as incurred by the respondents.